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No. 85-1388

Supreme Court, U.S.
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In the

# Supreme Court of the United States

October Term, 1985

Carrie Rose, Widow of
William L. Rose, Jr., Deceased,
Employee ..... *Petitioner*

V.

Arkansas State Police, Employer ..... *Respondent*

Public Employee Claims Division,
Arkansas Insurance Department, Carrier..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO REVIEW
DECISION OF ARKANSAS COURT OF APPEALS

## REPLY BRIEF OF PETITIONER

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## QUESTION FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner, constituting an unlawful conflict in state and federal legislation?

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## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI, Sec. 2 of the U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be

bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:
>
> > (1) if there is no surviving child of such officer, to the surviving spouse of such officer; . . .
>
> (e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983) ):

> (G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

## ARGUMENT

Respondents essentially make two arguments. Initially, respondents argue there is no conflict between Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605 (G) ) and the Public Safety Officers Benefits Act (41 U.S.C. Sec. 3796). Secondly, respondents suggest the Supremacy Clause (Art. VI, Sec. 2 of the U.S. Constitution) is inapplicable to the present dispute. Such arguments ignore the plain effect of the Arkansas act. Respondents' arguments will be addressed in reverse order.

Respondents suggest the Supremacy Clause is inapplicable to the present controversy. Initially, respondents characterize the subject area as the narrow area of workmen's compensation legislation. Of course, the Public Safety Officers Benefits Act is not a workmen's compensation act, although it serves a similar purpose, that of protecting the financial security of the dependents of public safety officers killed in the line of duty. Unquestionably the state has the right to legislate in such area. Also, without question is the power of the federal government to enact legislation in such area, since the duties of such officers include patrolling the U.S. and interstate highway systems, protecting the flow of interstate commerce, as well as assisting federal officers in effecting arrests and in a multitude of other ways. So the area is one of concurrent federal and state power, which cannot be seriously questioned by respondents.

This honorable Court, in the recent case of *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) discussed at length the various situations in which the Supremacy Clause applies. In *Maryland*, supra, this Court was concerned with an allegation the State of Louisiana's "first use tax" violated the Supremacy Clause because it interfered with federal regulation of the transportation and sale of natural gas in interstate com-

merce. After quoting the Supremacy Clause of the U.S. Constitution, this Court stated at page 2128 of 101 S.Ct.:

> "It is basic to this constitutional command that all conflicting state provisions be without effect. See *McCulloch v. Maryland*, 4 Wheat. 316, 427, 4 L.Ed. 579 (1819). See also *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941). Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). But as the Court stated in Rice:
>
> > 'Such a purpose [to displace state law] may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co. v. Public Service Comm'n*, 250 U.S. 566, 569 [40 S.Ct. 36, 37, 64 L.Ed. 1142]; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 [62 S.Ct. 491, 86 L.Ed. 754]. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co. v. Railroad Commission*, 236 U.S. 439 [35 S.Ct. 304, 59 L.Ed. 661]; *Charleston & W.C.R. Co. v. Varnville Co.*, 237 U.S. 597 [35 S.Ct. 715, 59 L.Ed. 1137]; *New York Central R. Co. v. Winfield*, 244 U.S. 147 [37 S.Ct. 546, 61 L.Ed. 1045]; *Napier v. Atlantic Coast Line R. Co.*, [272 U.S. 605, 47 S.Ct. 207, 71 L.Ed. 432]. *Or the state policy may produce a result inconsistent with the objective of the federal statute. Hill v. Florida*, 325 U.S. 538 [65 S.Ct. 1373, 89 L.Ed. 1782]' Ibid.

> *Of course, a state statute is void to the extent it conflicts with a federal statute*—if, for example, 'compliance with both federal and state regulations is a physical impossibility.' *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 1332, 142-143, 83 S.Ct. 1210, 1217-18, 10 L.Ed.2d 248 (1963), *or where the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' Hines v. Davidowitz*, supra, at 67, 61 S.Ct. at 404. See generally *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-158, 98 S.Ct. 988 944-45, L.Ed.2d 179 (1978); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854, 1859, 36 L.Ed.2d 547 (1973)." (emphasis added)

The Supremacy clause clearly applies when the state legislative enactment produces a result inconsistent with the purposes and objectives of Congress in enacting the federal statutory scheme, which is the case here. Congress expressly provided the $50,000.00 benefit payable under the Public Safety Officers Benefits Act "shall be in addition to any other benefit that may be due from any other source." (42 U.S.C. Sec. 3796(e) ) Even if such language had not been used, it would be clear the purposes and objectives of the Arkansas legislation and federal legislation conflict. The use of such language by Congress leads one to believe Congress was doing its best to make its intent clear and prevent the very thing from occurring that has occurred in the State of Arkansas as a result of Act 929 of 1981. The $50,000.00 gratuity provided by Congress was intended to better the lot of dependents of deceased police officers, not subsidize the State of Arkansas' worker's compensation program.

As authority for their position, respondents quote a portion of Sec. 292 of Am.Jur.2d, Constitutional Law, but conspicuously omit the sentence immediately preceding the quote appearing in their brief. The discussion of the law appearing in Sec. 292 of 16 Am.Jur.2d reads, more completely, as follows:

> *"Obvious conflict, actual or potential, between federal and state legislation, leads to easy exclusion of state action,* but there is a difficult penumbral area which can be rendered progressively clear only by the course of litigation. When the question is whether the federal act overrides the state law, the entire scheme of the statute must be considered, and a state law enacted under any of the reserved powers—especially if under the police power—is not to be set aside as inconsistent with an act of Congress, *unless there is actual repugnancy* or Congress has at least manifested a purpose to exercise its paramount authority over the subject. *Absent an obvious repugnancy between the federal and state legislation,* a state will be held barred, as a consequence of federal legislation, from legislating within a particular area only where the intention of Congress to exclude state action is clearly manifested.: (emphasis added)

Of course, here we are concerned with "an actual repugnancy" in the two statutory enactments. Also helpful in this regard is the following discussion appearing in Sec. 289 of 16 Am.Jur.2d, Constitutional Law:

> "By reason of the provision of the United States Constitution that the Constitution and laws passed in pursuance thereto shall be the supreme law of the land, *if a law passed by state in the exercise of it's acknowledged powers comes into conflict with an act of Congress, the state law must yield.* The federal and state legislatures cannot occupy the position of equal opposing sovereignties, because the Constitution declares the supremacy of the laws passed in pursuance thereof. The principal is therefore fundamental that state laws must yield to acts of Congress within the sphere of it's delegated power, even though the state laws were enacted in the exercise of acknowledged or uncontraverted powers, since giving effect to directions of state law which are contrary to statutes enacted by Congress pursuant to it's delegated power would result in the federal statute no longer being the supreme law of the land, as is required by the Federal Constitution."

Judge Franklin Waters in *First Federal Savings and Loan Association, etc., v. Myrick*, 533 F.Supp. 1041 (W.D. Ark. 1982) also explained the occasions for application of the Supremacy Clause. Judge Waters stated at Page 1044:

> "The Supremacy Clause invalidates state laws in two situations. In the first and rarer circumstance, it invalidates all state laws whether or not they are consistent with federal law. This 'complete ouster of state power' must be the clear and mainfest purpose of Congress 'either [because] the nature of the regulated subject matter permits no other conclusions, or [because] the Congress has unmistakenly so ordained.' (cite omitted)
>
> *In the second and more frequent situation, the Supremacy Clause invalidates conflicting state law, not because the federal legislation has completely occupied the field, but because the state law is in conflict with the federal.*" (cites omitted) (emphasis added)

It is clear from *Maryland v. Louisiana*, supra, as well as the other authorities cited above, application of the Supremacy Clause is not limited to situations where the federal government has sought to exclude state action, but applies in every instance where there is a conflict or repugnancy between state and federal legislation, as here.

Respondents cite *Richardson v. Belcher*, 404 U.S. 78 (1971), *Nooe v. Baltimore*, 28 Md. App. 348, 345 A.2d 134 (1974), *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970), and *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E.2d 22 (1954), which are either not in point or easily distinguishable. *Richardson v. Belcher*, supra held Section 224 of the Social Security Act, which requires a reduction in Social Secuurity benefits to reflect workman's compensation payments was not violative of the due process clause of the fifth amendment. No supremacy clause issue was raised since it was a federal, not state, enactment that provided for the credit against the right to benefits. *Nooe v.*

*Baltimore*, supra was simply a case of a city police officer receiving disability benefits from a pension plan provided for by a city ordinance also receiving workman's compensation benefits from the city under a separate enactment. Again, no federal legislation was involved. *Coletta v. State*, supra, concerned a situation where a Rhode Island national guardsman sustained injuries, was ultimately hospitalized in a U.S. Naval hospital, where he was immediately federalized and transferred from inactive duty National Guard status to regular active duty as a Staff Sargeant in the U.S. Army, which entitled him to regular Army pay, subsistance allowance and quarters allowance for his wife, in addition to medical and hospital treatment at the U.S.Government's expense. The Rhode Island Court merely held he could not receive both his regular Army pay and other Army benefits, and receive full worker's compensation benefits from the state. Since he was receiving regular Army pay, he would receive double compensation if he received full worker's compensation benefits, as well. No Supremacy Clause issue was involved. *State v. Industrial Commission*, supra, concerns only an offset of one form of state benefit against another state benefit. Again, no Supremacy Clause issue was involved.

The federal decisions cited by respondents, *Eagle Star Insuance Co. v. Deal*, 337 F.Supp. 1264, reversed 474 F.2d 1216, and *Phifer v. Union Carbide Corp.*, 492 F.Supp. 484 (E.D. Ark. 1980), are cited for the proposition that federal courts do not have jurisdiction to determine whether a person is entitled to worker's compensation benefits under Arkansas law. That is not in issue. The petitioner filed her worker's compensation claim with the Arkansas Worker's Compensation Commission, not the federal courts.

The only real issue is whether or not the purposes and objectives of Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) ) and the Public Safety Officer's Benefits Act (42 U.S.C. Sec. 3796) conflict. If so, the offending provision of state law is invalid pursuant to

the Supremacy Clause. As was indicated in the petitioner's petition, the test for determining whether a conflict exists is set forth in *Heinz v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed.2d 581 (1941), and *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971).

In *Perez*, supra, this Court considered a clash between Arizona's Motor Vehicle Safety Responsibility Act and the Federal Bankruptcy Act, since the provisions of the state law providing for suspension of a motorist's license who had an unsatisfied judgment against him clashed with the policies of the Bankruptcy Act giving debtors a "clean slate". Unquestionably the state had a right to legislate on the subject, as did the federal government, both laws touching upon the financial condition of the debtor. After considering the two statutes, the Court in *Perez*, supra, stated at Page 242 of 29 L.Ed.2d:

> " . . . In the final analysis, our function is to determine whether a challenged state statute '*stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress*, . . . '" (cites omitted) (emphasis added)

This Court looked to the *effect* of the law and held the Arizona Motor Vehicle Safety Responsibility Act to be invalid, stating at page 244 of 29 L.Ed.2d:

> "*Any statute which frustrates the full effectiveness of federal law is rendered invalid by the supremacy clause.*"

In the face of these authorities, respondents maintain there is no conflict between the state and federal enactments that are the subject of this litigation. Again, such argument ignores the plain *effect* of Act 929 of 1981 upon the intended benefit of the Public Safety Officer's Benefits Act. The Arkansas enactment effectively absorbs the $50,000.00 federal benefit in its entirety by allowing the

state to credit such benefits against the state's liability for workman's compensation death benefits to the petitioner. The petitioner is rendered no better off than if the Public Safety Officer's Benefits' Act were not in existence. Congress did not intend to subsidize the State of Arkansas for the first $50,000.00 of worker's compensation death benefits by enacting the Public Safety Officer's Benefits Act. Congress *did* intend to provide a $50,000.00 gratuity to the dependents of police officers killed in the line of duty, over and above all other benefits received. *U.S. Code Congressional and Administrative News*, Vol. 3, 1979, page 2529. Here, what the federal law gives, the state law takes away. Clearly the purposes and objective of Congress have been thwarted in Arkansas by Act 929 of 1981.

## CONCLUSION

Act 929 of 1981 relied upon by respondents must yield to and is superseded by the provisions of the Public Safety Officer's Benefits Act under the Surpemacy Clause of the U.S. Constitution, such federal act expressly providing the $50,000.00 benefit to dependents of police officers killed in the line of duty "shall be in addition to" any other benefits from any other source, necessarily including worker's compensation benefits. Congress intended for dependents of police officers killed in the line of duty in every state in the Union to benefit from the Public Safety Officer's Benefits Act, not just those in states other than Arkansas. Act 929 of 1981 unquestionably "stands as an obstacle to the full purposes and objectives of Congress" in the language of *Hines*, supra. Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Arkansas Court of Appeals.

Respectfully submitted,

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